

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

**Cr. Appeal No.253 Of 2000.
Judgment reserved on 26.7.2007.
Date of decision: July 31st, 2007.**

State of Himachal Pradesh.

..... Appellant.

Vs.

Joginder Singh and others.

..... Respondents.

Coram

The Hon'ble Mr.Justice Surinder Singh, Judge.

Whether approved for reporting? No.

For the Appellant: Mr. V.K.Verma, Addl. Advocate General.

For the respondents: Mr. R.K. Jaswal, Advocate.

Surinder Singh, J :

The Additional Chief Judicial Magistrate acquitted the respondents under Sections 447, 323, 325 and 506 read with Section 34 of the Indian Penal Code in Cr.CaseNo.14-1 of 1995, decided on 26.11.1999, against which the instant appeal as been filed by the State.

This Court had granted the leave to file an appeal on 10.5.2000. Now the matter has been finally heard.

Sh. V.K. Verma, the learned Additional Advocate General has argued that the trial court did not appreciate the prosecution evidence in the right perspective and unreliable standards were set to evaluate the evidence. The statements of the injured witnesses were brushed aside on conjecture and surmises, therefore the judgment of acquittal is wrong.

Whether reporters of local Papers may be allowed to see the judgment?Yes. .

Contra, Shri Rakesh Jaswal, learned counsel for the respondents has supported the judgment impugned and cited **2007 Cr.L.J. 1661** to buttress his arguments.

I have considered the rival contentions and have re-evaluated the evidence on record.

As a matter of fact the respondents faced the trial because of the following accusations that:-

the respondents, on 25.5.94 at about 7 A.M., in furtherance of their common intention had trespassed into the land in possession of the complainant Rikhi ram, with intention to voluntarily cause grievous hurt to Ramesh, his son and simple injuries to others. On the basis of Rapat Ext.PW8/A the FIR Ext.PW8/B was formally registered.

The police visited the spot, prepared the site plan and took into possession the revenue record Ext.PW12/A and B, the Khasra girdwari Ext.PW12/C. The MLC's Ext. PW10/A to C of the injured were also obtained with X-Ray's. Ramesh PW2 had sustained the fracture of Parietal bone. The police recorded the statements of witnesses under Section 161 of the Code of Criminal Procedure and presented the challan in the court for trial.

On the completion of trial and upon going through the evidence of the prosecution, the learned trial court had acquitted the respondents, precisely on the grounds that there has been dispute interse the parties over land comprised in Khasra No.293 which was subjudice in the court and Bhag Singh father of respondent Joginder and Mahipal had obtained the stay order from the court. Apart from this, there was also other cases pending before the Sub Divisional

Magistrate and Tehsildar, Bilaspur, which were filed by the respondents. Earlier, also a case under Section 304-A and 506 of the Indian Penal Code was there against the respondents filed by the complainant, in which they were acquitted. Against the above background, the learned trial court had observed that on account of the long litigation interse the parties, the statements of the complainant, his injured sons and his wife Brahmi Devi cannot be believed and the presence of alleged eye witness does not inspire confidence, PW6 Urmila Devi did not support the prosecution case. PW7 Dittu Deen is the resident of another village, which is about one K.M. from the village of respondents. He being a chance witness could not be believed. The possession of the disputed land was claimed by the respondents, the demarcation was got conducted from the Patwari who was not competent, therefore, it became all the more doubtful that the dispute over the land to which the complainant claimed has been in his possession. Thus, in the totality of circumstances, it was held that the evidence of the prosecution did not inspire confidence, as such the benefit of doubt was given to the respondents hence acquitted.

Now, on the reappraisal of the evidence recorded before the trial court, I also did not find the evidence of the prosecution evidence credible. There is no reference of any injury having been sustained by Ramesh PW2 on his head in the FIR for which, the respondents were charge sheeted under Section 325 of the Indian Penal Code. Even as PW2, he also did not state about it. He was medically examined on 25.5.94. His MLC is Ext.PW10/A. He was referred for X-Ray examination for right elbow joint and skull. On 11.6.94, this injury was held to

be grievous in view of the report of the Radiologist and on his further examination on 5.8.94 he developed paresis of the right upper limbs. The Radiologist and Titoo Ram named in the FIR were also not examined. The land, which is claimed by the complainant in his possession is not proved. Patwari was not competent to demarcate the land, therefore, his testimony was rightly rejected. It is also not clearly established that the respondents were aggressors.

Thus, two views are possible from the above evidence. The innocence of the respondents are fortified by the acquittal. On the above analysis, the view taken by the learned trial court in favour of the respondents is quite reasonable. There are no compelling reasons to interfere with the impugned judgment, as no convincing material was unjustifiably eliminated by the trial court.

For the reasons aforesaid, the appeal is dismissed. The respondents are discharged of their bail bonds entered upon by them at any stage during of these proceedings.

July 31st, 2007.
(PDS)

(Surinder Singh)
Judge.